

UNITED STATES OF AMERICA

V.

EARNEST GIBSON III

CASE NO.4;12-cr-0600-01

United States Courts
Southern District of Texas
FILED

APR 24 2024

Nathan Ochsner, Clerk of Court

REQUEST MASSIVE SENTENCE REDUCTION
AND
COMPASSIONATE RELEASE USC §3582

Come now Earnest Gibson III, Pro se, herein "Petitioner" requesting this Honorable Court to grant His request for a Massive sentencing reuction and Compassionate release. The Petitioner is a layman of the law and Pro'se filers are not held to the exacting and stringent standards as those lawyers trained in law. Accordingly the Petitioner invokes the legal lawyer precepts and holding of the Supreme Court as found in HAINES V. KERRER, 404 US 519, 520, 92 S.Ct 594, 30 LFD 652(1972); also see SOLOMON V PETRAY, 795 f. 3d 777,787 (8th Cir.2015) ~~holding that~~ a liberal construction means that the essence of an allegation is discernable, the court should construe the Petitioner compliant in a way that permits His claim to be considered in the proper framework. The Petitioner hereby declare that His request to this Honorable Court is "legally justified" due to the fact that the government conduct is shocking and outrageous as to violate the universal sense of "Justice". The Petitioner contends that the government unjustly created and caused the unjust "Massive sentencing against the Petitioner, Whereas none else involved in His case received such massive sentencing. Therefore the Petitioner Hereby request the Honorable Judge Rosenthal to reduce His excessive sentencing in accordance with the sentencing factors establised in 18 USC §3553(a). Respectfully the Petitioner also contend that Hi is eligible for Compassionate Release.

¶) The Petitioner contend that His U.S.S.C., §3A1.1(b)(1) and (2) Vulnerable Victims *4 should be reduced by this Honorable Court. Whereas the government secretly invaded the Personal Care Homes and Partial Hospitalization Program PHP(s).. and coerced these vulnerable frail edldery humans with coercive techniques (A) Psychological Ploys, (B) Money, (C) and other Gifts to personally committ medicare fraud on behalf of the government, not the Petitioner.

¶) Such conduct on behalf of the government caused His conviction and Massive Sentence. Therefore the Petitioner assert that His case is very similar to U.S. Gromite 09 OR 558-01 (OM)(SDNY Jan 19, 2024, in which Judge McMeon ruled the government agent supplied a design and gave it form, so that the agent, rather than the defendant, inspired the crime, provoked it, planned it, equipped it, and furnished the time and targets. Therefore the Petitioner declare that the government only after His PSI report and once He was incarcerated It then revealed such conduct (i.e. See Petitioner Amended PSI Report and Counselor Bradshaw Statements Ex 1, Ex 2). In addition the government violated the Petitioner "Adverse Interest Rule Rights". Whereas the government failed to produce any of the "250" vulnerable frail elderly victims within It power that should have been produced during His trail nor PSI Sentencing. Such government conduct therefore denied the Petitioner His right to request the Honorable Judge Lee Rosenthal to instruct the jury to infer that witness is unfavorable to the government case. All such conduct was also a violation of His disjunctive allegation right, Ruan v. United States, 142 S.Ct. 2370, 213 L.Ed 2d 707 (2022). Accordingly all such government conduct was then unjustly utilized to convict and give Him a massive sentence with "deliberate indifference" jury instruction and PSI Sentencing Hearing.

¶) Therefore according to the Sentencing Commission Policy (a)(1)(B) the court must first determine the scope of the criminal activity the Participant agreed to undertake. However in the Petitioner case the government with It top secret (A) Confidential Human Source (i.e. CHS...), (B) Dynamic Contract; (C) Kahn, (i.e. Kahn.. Secret HHP Business Enterprise...), (D) Physicians etc..., all secretly conspired to conduct medicare fraud. (Ex 3). However the government unfairly accused Earnest Gibson III of being "deliberate indifference" (i.e. "Willfully Blind"...) and then gave Him a massive sentence for a "Secret Scheme that the government and its coconspirators committed in secret. All such secretive conduct was hidden from Earnest Gibson III during (A) The Investigation, (B) Trail, (C) PSI hearing. In addition it should be noted that the government and Kahn fired anyone they thought were going to reveal It scheme to pay patients (i.e, Ex 4, Kahn and CHS fired JACO..), The government conduct was so secret that even the Patients did not know of the government and Kahn secret scheme and they were there every day (Ex 5). Therefore such secret conduct by The Conspirators (A) Government, (B) CHS (C) Kahn, (D) Dynamic, (C) Other Coconspirators. was not reasonably foreseeable in connection with the conspiracy as the CEO (i.e "Employee"...) of the hospital. Whereas Earnest Gibson III (ie The Petitioner was not a member of the Governing Body nor A Physician whom both were legally responsible the Patients admitted into the Partial Hospitalization Program(s). However the Petitioner was given an unjust massive sentence.

OVERVIEW OF PETITIONER CLAIM

¶) Accordingly it should be noted after the Petitioner (A) trail and (B) incarceration the government only then revealed in His PSI that the government itself created and caused these frail vulnerable elderly to be victims on themselves. Therefore It was the government and victims themselves that created the victims, not the Petitioner. In addition it should be noted by this court that the government prevented every one of these victims from testifying at His trail ^{AND} at His Massive Sentencing Brocedures. Accordingly it was the government and the government self-created victims whom were the beneficiary of the government secret scheme not the Petitioner (i.e. Earnest Gibson III..).

GOVERNMENT SECRETLY VIOLATED
FCA §1 U.S.C. §3729

1) For example in the Petitioner ^{CASE} the government now admitt that in ~~admitt that in~~ secret that It violated FCA §1 U.S.C. §3729 ie seq, is an anti-fraud statue that prohibits the knowing submission of false or fraudlent claims to the federal government. Specifically the § 3729 imposes liability when (A) a person presents, or causes to be presented, a claim for payment or, fraudlent; and (C) the person's acts are undertaken "knowingly" i.e. with knowledge of information, or with deliberate ignorance or reckless disregard for the truth or falsify of the claim. 1d §3729(a)(1), (b) Section 3729(a)(3) prohibits conspiracies to defraud the government (2003 U.S. (a)(3) prohibits conspiracies to defraud the government (2003 U.S. App. LEXIS 13) by getting false or fraudlent claim allowed or paid, 1d §3730(b)(2).

¶) The Petitioner contend that He is deserving of consideration for downward departure by this Honorable Court. Such consideration is due to the fact that in ^{his} case the "Government 'Top Secret' conduct was improperly imputed to Him with 'deliberate indifference' unjustly allowed Him to be involved in His case. Such government conduct allowed Him to be sentenced for conduct that substantially overstated the seriousness of the offense the government wrongfully alleged He had committed. Accordingly and respectfully the Petitioner 'Earnest Gibson III' contend that a downward departure is warranted. Whereas the massive sentencing He received was not fair to the call for 'Justice'. However Earnest Gibson III request a downward departure is justified according to NSH 748 Amendment:Section 2D1.1.(a)(5)(c) Downward Departure Consideration. Whereas it should be noted that He did not receive any 'Money' for the conduct He was accused of violating. For example as noted by the Honorable Judge Lee. Rosenthal during His sentencing procedures when She stated 'Mr.Gibson III You made a good salary but that is not against the law. Accordingly the Petitioner contend that His request is justified as stated in Sentencing Guidelines by the Commission Guidelines by the commission Ch.1 Pt.(A) (ii) 'It Expected that departures based on such unidentified circumstances will occur rarely and only in exceptional cases. The Petitioner 'Earnest Gibson III' hereby declare that His case is 'ONE' such rare and exceptional case.

¶) The Petitioner declare it should be noted by the Honorable Judge Lee Rosenthal that the government did not intend for the Petitioner (i.e Earnest Gibson III...) to be treated fair relative to His sentencing. For example the government offered every other defendant in His case "A Plea Agreement" "Except Earnest Gibson III. In addition nowhere in the legal rules, regulations or statutes conferr to the fact that the Petitioner is legally liable for the conduct he received such massive sentencing (See § 482.12 and §485.709...). The Petitioner contend that the government should not be allowed to secretly violate § 30122 Contribution In The Name Of Another Prohibited and then massively sentence the Petitioner. In addition the government "Now Admit it committed §1031 Major Fraud Against The Government. The Petitioner declare that He was unjustly denied the benefit of a well established rule "That A defendant must be offered a meaningly opportunity to explain or deny the evidence introduced against Him at Sentencing. Post at 180,135 L.Ed 2d, at 481-482.

¶) The Petitioner contend that His request for reveiw of sentence is based on §3742 Review of Sentence.

(a) Appeal by defendant: A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence²⁻

(1) was imposed in violation of law

was imposed as a result of an incorrect application^{oof} an incorrect application of sentencing guidelines

or

(3) is greater than the sentence specified in the application guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation or supervised release than the maximum established in the guideling range, or includes a more limiting condition of probation or supervised release under 3563(b)(6) or (b)(11) than the maximum established in the guide-line range or (b) (11) than the maximum established in the guide^l or range; or

(4) was imposed for an offender which there is no sentencing guideline and is plainly unreasonable

¶) Whereas it should be noted that the amendment authority under 28 U.S.C. § 994(O) and (P), the Commission has modified Its definition in several respects to focus more precisely on the class of recidivist in several respects to focus more precisely on the class of recidivist for whom lengthy term of imprisonment is approiate ¶And To Avoid Unwarranted Sentencing Disparities Among Defendants with Similar Criminal Conduct U.S.C. §994(O) and (P), the commisson has modified unwarranted sentencing disparities among defendant with records who have been found guilty of similar conduct.

Whereas as noted in the Sentencing Commission Guidelines the government hidden conduct was not reasonable foreseeable in connection with the government own coconspirators secret conduct.

PETITIONER DENIED PSI REPORT

¶) Respectfully it is the duty to focus on the class of recidivist for whom a lengthy term of imprisonment is appropriate and to avoid "unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct 28 U.S.C. § 991(b)(1)(B). The committee view the substantial prison term should be imposed on repeat offenders and repeat drug traffickers, Respectfully the Petitioner contend that the Commission intention was not to give a massive sentencing in a case like the Petitioner "Earnest Gibson III". The Petitioner declare that the government report was a violation of Sentencing Commission Rule §6A1.2 Disclosure of Presentencing Report Issues Dispute. Whereas Earnest Gibson III was denied His timely Presentence Report (i.e. Ex 1 and Counselor Bradshaw Statements Ex2). It should be noted by this Court that the first time the government provided Him relative information relative to the to the fact that the government had coerced multiple victims to committ medicare fraud was after He was incarcerated :

¶) The Petitioner contend that all of the government enhancements in His case should be nullified. Whereas the government in It PSI after His trail and incarceration, revealed that It secretly created, caused, and directly participated in the violation of It own medicare contract with Riverside Hospital PHP(s) , Personal Care Homes, and Private Contractors. Such government conduct was illegal and involuntary. The government acknowledged in the Petitioner PSI that it illegally caused at "250" vulnerable frail elderly humans to committ medicare fraud. In addition the government kept all of "Top Secret Scheme hidden. However the government still accused the Petitioner of being "deliberate indifference", to Its Top Secret Contract Violation.. Whereas the Petitioner assert that: He can not be legally blind to conduct that is kept secret. Whereas It was the government the was "Willfully Blind" to Justice, relative to both the vulnerable frail elderly humans and the Petitioner.

¶) The Petitioner contend that His sentencing reduction is deserving in accordance with §5K2.12 Coercion and Duress (Policy Statement...). Such conduct decreases ordinarily reasonableness of the defendant's action, seriousness of coercion. Whereas as previously noted It was the government who in secret with multiple secret conspirators coerced "The Elderly" to committ medicare fraud. The Petitioner was kept blind to such conduct by the government own conduct so that "The Government" could then violate His constitutional and due process rights to fair trail and sentence by accusing the Petitioner of being "deliberate indifference" to conduct it kept secret during His trail and sentencing. In addition the Petitioner contend that the Honorable Court should apply a downward departure in His sentence based on §5K2.13. Diminished Capacity. Whereas the government secretly coerced "250 Vulernable Frail Elderly Victum" whomwere suffering a significantly reduced mental capacity casused by the government coercion to committ medicare fraud. The government coercion contributed substant-ially to the commission of the offence. Whereas this is the reason that the government did not allow ("i.e Not One Elderly Patient"..) to testify. during the Petitioner case nor at his unjust massive sentencing.

Government Violated Used Immunity Testimony

¶) Respectfully the Petitioner contend that the content of legal request to This Honorable Court is sxtensive. Such request is large due to the fact that the government conduct was with Its "Top Level Secret Coercion", (A) Invasion Into Personal Care Homes, and (B) Partial Hospitilization Program(s) by the government was sophisticated with multiple techniques and special trained staff. All such conduct was not ligitma and was a violation of the "Medicare Contract It Had A Legal Duty to Comply With" "Not Violate". Therefore the Petitioner contend that the governmentdt violated the "Vulernable Frail Elderly and Petitioner "Use Immunity Right" when It used the coerced and compelled testimony and information derived from that coerced testimony during His trail and sentencing procedure(s).

¶) The Petitioner contend that the government secretly violated §1031. MAJOR FRAUD AGAINST THE UNITED STATES. Accordingly the Petitioner was not notified of the government unlawful conduct during His trail nor during His unjust massive sentencing (See Atty DeGuerin Statement to the court..EX_6). In addition the government wrongfully accused Him to be charged with a find over \$ 1,000,000,00 and imprisoned for at 45 years for conduct that the government caused and created. However the government did not sentence not one of the "Frail Vulernable Elderly" that the government caused to committ medicare fraud against themselves. However the government did have the Petitioner Sentence for the exact crimes the government and frail vulernable elderly committed. All such unlawful conduct on behalf of the government was a violation of the 42 U.S.C.S. §1395hh(a)(2) Medicare Act Requirement To Provide Public Notice and a 60-day Comment Period For Any Such Rule. Whereas in the Petitioner case the government never provided any such public notice during none of His (A) Investigation, (B) Grand Jury, (C) Court Proceeding, nor in His Sentencing Procedures.

Classified To U.S. Supreme Court Digest, Lawyers" Edition

1. Congress has told the government that when it wishes to establish or change a substantive legal standard affecting Medicare Benefits, it must first afford the public notice and a chance to comment §42 U.S.C.S. § 1395hh(a)(2). The statute requires the government to provide a 60 day comment period. Whereas in the Petitioner case all such rights were denied by the government. Whereas such government denial allowed the government to then unjustly accuse Him (i.e, "Him Along"...) as being willfully blind (i.e. "deliberate indifference"... Therefore the Petitioner assert that such government conduct is a violation of His due process right to a fair trail and sentencing; (See. Alex M. Azar. II. Secretary of Health and Humans Services, et al. 587 US __. 139 S Ct __ 204 L. Ed 2d 139, 2019 US LEXIS 3888.

3 11) The Petitioner contend that the government does not have the legal right to accuse Him with such larger actual nor intended loss in His case (i.e. "Sedding The Debt"...). Whereas the government used undue influence in the medicare contract to ascertain a conviction. Whereas the government violated the "Element of Intent of Knowledge": "A requirement of intent serve to relieve the statue of the objection that punishes without warning a an offence of which the accused is unaware. It should also be noted that such conduct on behalf of the government was illegal. In addition it is a violation of Constructive Trust: A trust implied by law though not actual in fact against one who by actual or constructive fraud by duress, or any other unconscionable conduct or questionable means; has obtained or holds legal title to property which He is not "Equitally Entitled To".

11) Whereas it should be noted that the government violated the contract right of both the Petitioner and the public. Such government conduct was therefore a violation of U.S. §156 contract-rights and duties. For example when the United States enters into contract relations, the right and duties of the U.S. therein are governed generally by the law applicable to contracts between private individuals. It should also be noted that the government violated § 666 Theft or Bribery Concerning programs receiving federal funds. In addition it should be noted that the government secret conduct was violation of USC 15 §78u-4(b)(4).

¶) The Petitioner declare that He was unjustly given a Massive Sentence for conduct that was not Reasonable Foreseeable in connection with the (A) Government, (B) Kahn (i.e. Dr.Kahn) (C) Bullock, (D) Fugerson and (E) Other~~r~~Conspirators. Whereas Kahn whom worked for Riverside Hospital Secretly created His Own PHP and other Business(s) (See Ex^{7,10}~~7,10~~). However Kahn billed medicare for services even though Riverside Hospital employees Proformed all of the work (See Ex^{7,8,9}~~7,8,9~~). For example it should be noted when Kahn was indicted the government sited several checks that was paid to the government~~agent~~ by Kahn, not the hospital. Accordingly it was Kahn who with His own business who paid for His own business and enriched Himself on behalf of the work of Riverside Hospital. In addition Dynamic who owned It own PHP(s) and Personal Care Homes whom were paying its own patients to attend the PHP(s). All such conduct was unbeknown to the Hospital before it purchased Riverside Hospital. However the government~~7~~ unjustly held the Petitioner responsible for conduct of another~~r~~company business (Dynamic PHP...). In addition the government secretly invaded the Personal Care Homes and the PHP(s) and coerced vulernable frail elderly humans to committ crimes against themselves. However without relitigating His unjust conviction, it should be noted on multiple occasions the government attempted to convience the Petitioner to committ medicare fraud. However the Petitioner refused to committ such fraud. [Thus such conduct illustrate that it was the government themselves whom was "deliberate indifference" ("Willfully Blind"...)] to Justice for Both the Petitioner and the Elderly when it told the court and jury that the Petitioner was accountable for such conduct that was not reasonably foreseeable and He refused to participate.

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OVERVIEW OF PETITIONER CLAIM

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¶) The Petitioner contend that the government secretly violated §1031. MAJOR FRAUD AGAINST THE UNITED STATES. Accordingly the Petitioner was not notified of the government unlawful conduct during His trail nor during His unjust massive sentencing (See Atty DeGuerin Statement to the court..EX_6). In addition the government wrongfully accused Him to be charged with a find over \$ 1,000,000,00 and imprisoned for at 45 years for conduct that the government caused and created. However the government did not sentence not one of the "Frail Vulernable Elderly" that the government caused to committ medicare fraud against themselves. However the government did have the Petitioner Sentence for the exact crimes the government and frail vulernable elderly committed. All such unlawful conduct on behalf of the government was a violation of the 42 U.S.C.S. §1395hh(a)(2) Medicare Act Requirement To Provide Public Notice and a 60-day Comment Period For Any Such Rule. Whereas in the Petitioner case the government never provided any such public notice during none of His (A) Investigation, (B) Grand Jury, (C) Court Proceeding, nor in His Sentencing Procedures.

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1. Congress has told the government that when it wishes to establish or change a substantive legal standard affecting Medicare Benefits, it must first afford the public notice and a chance to comment §42 U.S.C.S. § 1395hh(a)(2). The statute requires the government to provide a 60 day comment period. Whereas in the Petitioner case all such rights were denied by the government. Whereas such government denial allowed the government to then unjustly accuse Him (i.e, "Him Along"...) as being willfully blind (i.e. "deliberate indifference"... Therefore the Petitioner assert that such government conduct is a violation of His due process right to a fair trail and sentencing; (See. Alex M. Azar. II. Secretary of Health and Humans Services, et al. 587 US __. 139 S Ct __ 204 L.Ed 2d 139, 2019 US LEXIS 3888.

3 11) The Petitioner contend that the government does not have the legal right to accuse Him with such larger actual nor intended 1 lost in His case (i.e. "Sedding The Debt"...). Whereas the government used undue influence in the medicare contract to ascertain a conviction. Whereas the government violated the "Element of Intent of Knowledge": "A requirement of intent serve to relieve the statue of the objection that punishes without warning a an offence of which the accused is unaware. It should also be noted that such conduct on behalf of the government was illegal. In addition it is a violation of Constructive Trust: A trust implied by law though not actual in fact against one who by actual or constructive fraud by duress, or any other unconscionable conduct or questionable means; has obtained or holds legal title to property which He is not "Equitally Entitled To".

11) Whereas it should be noted that the government violated the contract right of both the Petitioner and the public. Such government conduct was therefore a violation of U.S. §156= contract-rights and duties. For example when the United States enters into contract relations, the right and duties of the U.S. therein are governed generally by the law applicable to contracts between private individuals. It should also be noted that the government violated § 666 Theft or Bribery Concerning programs receiving federal funds. In addition it should be noted that the government secret conduct was violation of USC 15 §78u-4(b)(4).

Earnest Gibson III was denied the right to confront the Primary Physician (i.e as well as other Doctors...) whom admitted patients into the PHP. As noted the Primary Doctor (Dr. Nazarani ~~Et~~^{II}) actually told the government that 99 "Percent of every patient he admitted to the PHP needed to be admitted, In addition He would have admitted the other 1 Percent. In addition Mr. Gibson III was denied His constitutional right to claim that these vulernable elderly humans was mentally ill and lacked the compassity to deny or defend themselves against coercions. In fact if patients had been coerced He and She was denied the right to claim each was in infact mentally ill.

I hereby also declare that the government "Top Level Secretive Corecrcion of these frail vulernable elderly humanbeing is a violation of Programs To Promote the Elderly Justice §1397... The government secretly knowingly and intentionally (1) "Abuse" means the knowing infliction of psychological harm on these frail elerly humans.

I also contend that the government secret conduct was a violation of § 1395 Prohibition Against Any Federal Interference. Whereas noting should be construed to authorize any supervision or control over the practice of medicine or the manner in which medical services are provided etc. In addition no government agent is allowed to excercise any Supervision or control over the administration or control over the administration or operation of any such institution, agency, or person. However the government's CHS had such control, all in violation of §1397.

In fact in addition to paying the patients to attend the PHP, the government CHS participated in the direct admission of patients it had paid, as well as paying othere patients while they were actually receiving care in the PHP.

¶) The Petitioner contend that It should be noted by This Honorable Court that the government did not intend for Him to be treated fair relative to His sentencing. For example the government offered every other defendant in His case a "Plea Agreement" except "Earnest Gibson III. In addition nowhere in the legal rules, regulations, nor statutes that factually nor legally allow the Petitioner to legally punish Earnest Gibson III (See §462.12 and §485.708.) for government unlawful conduct. Whereas the government should not be allowed to Secretly Violate §30122 Contribution In Name of Another, and then massively sentence the Petitioner, In addition the government "Now Admit" it violated §1031 Major Fraud Against The United States (i.e. "It Own Government"). The Petitioner declare that He was unjustly denied the benefit of a well established rule a defendant must be given a meaningful opportunity to explain or deny the evidence introduced against at Sentencing (See Post at 180,135, L.Ed 2d, at 481-482..).

¶) Respectfully the Petitioner also contend that This Honorable Court should release Him based on the First Step Act Sentencing Reduction that used to address "FBI Fed Conspirator" (See. U.S. v. Williams, N, 09 CR(CM) (SDNY July 27, 2023. Whereas it should be noted that the government causing and creating the crimes by these vulnerable frail elderly humans actually assured that there were no victims. Whereas the court precedents distinguish between fraud schemes that benefit patients and those that Harm Them. Whereas an example of harm includes keeping patients in the medical facilities unnecessarily or subjecting them to unnecessary treatments. Patients that are harmed count as victims §3A1.1(b). Whereas the government coerced these "vulnerable frail elderly to commit crimes against themselves and benefitted from it, Therefore they cannot not be counted as victims.

¶) The Petitioner contend that His sentencing reduction is deserving in accordance with §5K2.12 Coercion and Duress (Policy Statement...). Such conduct decreases ordinarily reasonableness of the defendant's action, seriousness of coercion. Whereas as previously noted It was the government who in secret with multiple secret conspirators coerced "The Elderly" to committ medicare fraud. The Petitioner was kept blind to such conduct by the government own conduct so that "The Government" could then violate His constitutional and due process rights to fair trail and sentence by accusing the Petitioner of being "deliberate indifference" to conduct it kept secret during His trail and sentencing. In addition the Petitioner contend that the Honorable Court should apply a downward departure in His sentence based on §5K2.13. Diminished Capacity. Whereas the government secretly coerced "250 Vulernable Frail Elderly Victim" whomwere suffering a significantly reduced mental capacity casused by the government coercion to committ medicare fraud. The government coercion contributed substantially to the commission of the offence. Whereas this is the reason that the government did not allow ("i.e Not One Elderly Patient"..) to testify during the Petitioner case nor at his unjust massive sentencing. HEARING

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SECRET CONDUCT CAUSED IMPOSSIBILITY TO COMPLY

WITH

MEDICARE CONTRACT

A The Petitioner contend that the government "Top Level Secretive Investigation caused according to Public Contracts > Proformance > Impossibility and > Impracticability. Whereas The Doctrine of Impossibility does not require a showing of actual or literal impossibility of performance but only a showing of commerical impracticability. The United States Supreme Court has reformulated the common law doctrine of impossibility as follows: Where, after a contract is made, a non-performing party's performance is made impracticable without His fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicates the contrary. This defense requires the non-performing party to show that (1) a supervening event made performance impracticable: (2) the non-occurrence of the event was a basic assumption upon which the contract was based: (3) the occurrence of the event was not his fault: (4) he did not assume the risk of occurrence. In addition if the risk was foreseeable there should have been a provision for it in the contract. Accordingly all of the government "Top Level Secretive conduct at the (Personal Care Homes..) and (PHP(s) were outside the control and responsibility of the Petitioner.

UNDISCLOSED PRINCIPAL

11) The government after trial and Petitioner incarceration revealed that It was the Undisclosed Principal in Earnest Gibson III (i.e "Petitioner") see amended PSI Report, Accordingly by law the Principal is one whom identity is kept secret by the agent and whom the other party has no notice that the agent is acting on behalf of the Principal. The Petitioner contend that such secret government conduct is unjust and goes against the rule of law and equal justice. Whereas it should be noted that an undisclosed principal and the agent are both liable in a contract entered into by the agent with the Principal Authority. Whereas it should be noted that the government (A) Coerced Multiple Frail Elderly Vulnerable Humans (i.e. 250") to undergo (1) Psychological, (2) Mental Health, (C) Substance Abuse, (D) Other Medical Treatments. All such conduct was so secret and successful that not one Doctor (See. Top Doctor Nazarani...) could determine that these patients were being coerced and paid to committ medicare fraud on behalf of the government.

12) Whereas in the "Law of Contract" "The Principal Only Authorizes AN Act and The Agent Carries It Out". It should be noted in the Petitioner case the government "Top Secret" Confidential Human Source (CHS) not only coerced frail elderly humans to attend medical care in the PHP(s), CHS and Its co-conspirators, actually participated in firing of employee (e) whom the government was afraid would reveal it scheme. Therefore it should be noted that the undisclosed principal and agent are both liable on a contract entered into by the agent with the Principal. Accordingly the Petitioner declare that the jury in His trial was denied the right to know the elements of the crime, conviction, and sentencing it would be allowing "Earnest Gibson III to be criminal liable.

GOVERNMENT SECRETLY CREATED INTERFERENCE
WITH
MEDICARE CONTRACT

Whereas it should be noted by the honorable court that after His trail and incarceration, the government in the Petitioner PSI revealed that It had conducted "Tortious Interference With contractual relationship between Riverside Hospital and Government's Medicare Contract. For example it is illegal when a third party intentional induce induce a contracting party to break a contract, causing damage to the relationship between the contracting parties. As describe in the Petitioner PSI by the government the government secretly violated "Americans with Disabilities Act.: A Federal Statue that "Prohibits Discrimination:PIn Public Services and Public accomodation-against any person with a disability (i.e. Physical or mental impairment that substantially limits one or more of the life activities.(42 §§ 12101-12213.)

Accordingly the government knowingly submitted false medicare claims. Such conduct on behalf of the government was a violation of §3729 False Claims (a) liability of dertain acts:

- (A) knowingly presents, or cause to be presented, a false or fraudulent claim for payment of approval
- (B) Knowingly makes,uses,or causes to be made or used, a false redord or statement material to aafalse or fradulent claim
- (C) Conspiracy to committ a violation of (A)(B) (D),(F) or (G).